IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4292 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAI LAKHIBEN ,SINCE DECD.BY HER HEIRS & L/R

Versus

JAGJIVANBHAI J VALAND - SINCE DECD.BY HIS HEIRS & L/R.

Appearance:

MRS KETTY A MEHTA for Petitioner No.1-2/3

MR MA KHARADI for Respondent No.1-1/4

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 16/06/2003

ORAL JUDGEMENT

1. This is an application under Article 227 of the Constitution of India seeking direction to the effect that the judgement and order dated 27-06-1986 passed by the Gujarat Revenue Tribunal ('the Tribunal') in Revision Application No.Ten.B.A.251/82 be quashed and set aside.

2. The original petitioner No.1 Bai Lakhiben was the widow of one Tribhovanbhai Naranbhai. However, during pendency of the petition since she passed away her legal heirs and legal representative have been brought on record. The original respondent, late Shri Jagjivanbhai

Jerambhai Valand, has also been replaced by his heirs and legal representatives.

3. It appears that one Durlabhbhai had two sons, namely, Dahyabhai and Naranbhai. Dahyabhai in turn had two sons, namely, Jerambhai and Tribhovanbhai. As Naranbhai had no issue he adopted Tribhovanbhai as his son. By Lakhiben was the wife of Tribhovanbhai. Jerambhai had a son named Jagjivanbhai. Therefore, late Tribhovanbhai and Jerambhai were real brothers, but as Tribhovanbhai was adopted by Naranbhai he used to describe himself as Tribhovanbhai Naranbhai. Shri Tribhovanbhai owned property bearing Survey Nos.222 and 223 in Village Kathor, Taluka Kamrej, Dist. Surat. As the said Shri Tribhovanbhai was staying in Africa, he executed a power of attorney in favour of his brother Jerambhai Dahyabhai and by virtue of the said power of attorney late Jerambhai was managing the aforesaid properties of Tribhovanbhai. It is the say of the petitioner that by virtue of the said power of attorney late Jerambhai got his name entered as a tenant in the record of rights and accordingly Entry Nos.431 and 48 were made in relation to the land bearing aforesaid two survey numbers. In the year 1966 the Mamlatdar and ALT, Kamrej took action under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') and registered the same as Case No.3068 of 1966. However, as Jerambhai had expired on 14.05.1959 his son Jagjivanbhai appeared in the said proceedings and statements of both Bai Lakhiben and Jagjivanbhai were recorded by the Mamlatdar and ALT, Kamrej. On the basis of the aforesaid statements, by order dated 30.06.1966 the Mamlatdar and ALT held that the respondent was not a tenant within the meaning of the Act and accordingly his name was ordered to be deleted from the record of rights. Accordingly on 10.08.1966 change Entry No.1031 was made deleting the name of the respondent. The said entry was confirmed subsequently on 04.10.1966. It is an admitted position between the parties that despite the aforesaid deletion of name as tenant from record of rights of the said two survey numbers, the respondent was in possession of the property upto 1979. By a registered sale deed dated 29.02.1980 Bai Lakhiben sold the properties in favour of petitioner No.2 - Kushalbhai C. Patel.

4. On 01.03.1980 respondent - Jagjivanbhai Jerambhai preferred an application before the Mamlatdar and ALT under Section 32-G of the Act and after narrating the aforesaid facts stated that his name was wrongly deleted as tenant and as he was in actual possession of the land till 1979 and was paying the land revenue the Mamlatdar

and ALT was called upon to decide the price of the land at which the tenant would become entitled to purchase the land being a tenant as on 01.04.1957. During pendency of the said application under Section 32-G of the Act an application dated 21.06.1980 seeking modification of the application was moved. Another application stated to be an application under Section 70(nb) of the Act was moved on 21.06.1980 seeking injunction till the disposal of the application under Section 32-G of the Act. On 17.09.1980 the Mamlatdar and ALT, Kamrej rejected the application for temporary injunction under Section 70(nb) of the Act in Tenancy Case No.70(nb) of 1980. The appeal of the respondent against the same also came to be dismissed on 29.11.1980. The respondent carried the matter in revision being Revision Application No.Ten.B.S.44 of 1981 which came to be decided on 29.04.1981. As recorded by the Tribunal it was an admitted position between the parties that the application under Section 32-G of the Act was yet pending before the Mamlatdar and ALT and hence, the Revision Application was dismissed while observing that the parties would be entitled to put forward their respective cases in the inquiry that may be carried out by the Mamlatdar and ALT in the proceedings under Section 32-G of the Act. The Mamlatdar and ALT vide order dated 23.12.1981 passed in Tenancy Case No.7 of 1981 held that the respondent was a tenant in the land bearing aforesaid survey numbers and that possession should be handed over to the respondent. It was also observed by the Mamlatdar and ALT that proceedings for determination of the purchase price of the lands shall be subsequently taken up. The petitioner went in appeal against the aforesaid judgment and order dated 23.12.1981 and the appeal came to be registered being Tenancy Appeal No.8 of 1982 before the Dy. Collector, Olpad Prant, Surat. On 31.05.1982 the appeal was allowed by the Dy. Collector, Olpad Prant, Surat holding that the respondent was not a tenant of the lands in question and the order of the Mamlatdar and ALT was set aside.

5. The respondent, being aggrieved by the aforesaid order in appeal, preferred Revision Application which came to be registered as Revision Application No.TEN.B.A.251/82 before the Tribunal. On 27.06.1986 the Tribunal allowed the Revision Application holding that the respondent was a contractual tenant of the land in question and not a deemed tenant and, therefore, upheld the order of the Mamlatdar and ALT holding that the respondent was entitled to purchase and possession of the lands in question.

6. Mrs.K.A. Mehta, the learned advocate appearing

on behalf of the petitioners, submitted that firstly, in light of the fact that the proceedings under Section 32-G of the Act had already been initiated and terminated in 1966, bar of res judicata would apply in the present proceedings and the respondent could not have preferred another application under Section 32-G of the Act in 1980; secondly, it was contended that the Tribunal had committed a serious mistake in allowing the Revision Application by holding that the respondent was a contractual tenant without there being any evidence in support of the said finding. Thus, according to Mrs.Mehta, the Tribunal had committed a jurisdictional error by passing an order de hors the facts and evidence on record.

7. Mr.M.A.Kharadi, the learned advocate appearing on behalf of the respondent, submitted that the respondent had stepped into the shoes of late Jerambhai who was admittedly in possession of the land in question as on 01.04.1957 and hence, the Tribunal had rightly upheld the order of the Mamlatdar and ALT holding the respondent to be a tenant. It was submitted that once the Mamlatdar and ALT had held the respondent to be a tenant it was of no consequence whether he would be a deemed tenant under Section 4 of the Act or a contractual tenant as held by the Tribunal. It was further submitted that the petition being under Article 227 of the Constitution, the law was settled that unless it was shown that there was a fundamental jurisdictional error in the order of the Tribunal, merely because on the same set of facts another view was possible, this Court should not interfere with the order of the Tribunal.

8. Having heard both the sides and taking into consideration the compilation filed on behalf of the petitioners, it is apparent that this petition requires to be allowed for the reasons that follow.

9. As can be seen from the proceedings under Section 32-G of the Act taken in Case No.3068 of 1966, the Mamlatdar and ALT had recorded statements of respondent Jagjivanbhai as well as petitioner - Bai Lakhiben. It is pertinent to note that the respondent has specifically stated that the petitioner is "my aunty and I am in possession of the land as a member of the family. Therefore, I am not a tenant nor do I pay rent and hence, my name may be deleted". This statement is recorded on 20.06.1966, the petitioner - Bai Lakhiben has also given her statement on similar lines. The Mamlatdar and ALT has passed the final order on 30.06.1966 after taking into consideration the aforesaid statements. In the

present proceedings the Mamlatdar and ALT as well as the Tribunal have glossed over this order by stating that the said order was made in the name of late Shri Jerambhai Dahyabhai and that the respondent - Jagjivanbhai was not held to be not a tenant of the lands in question. Thus, according to the Mamlatdar and ALT as well as the Tribunal, for the present proceedings earlier order dated 30.06.1966 was a nullity.

10. Both the Mamlatdar and ALT as well as the Tribunal have lost sight of the fact that Jerambhai had already passed away on 14.05.1959 and that the Mamlatdar and ALT in proceedings in Case No.3068 of 1966 had recorded statement of the respondent - Jagjivanbhai. Therefore, there was no question that the proceedings or the order being against a dead person. May be, the final order dated 30.06.1966 erroneously records that a copy of the order be forwarded to the tenant Jerambhai Dahyabhai, but the order has to be read in the context of the proceedings conducted by the Mamlatdar and ALT in Case No.3068 of 1966. Therefore, the Mamlatdar and ALT in the present proceedings could not have entertained the subsequent application filed under Section 32-G of the Act in 1980.

11. Even assuming for the sake of argument, that the said order dated 30.06.1966 could be treated as a nullity, it is an admitted position between the parties that late Shri Jerambhai Dahyabhai was in occupation of the land in question by virtue of the power of attorney executed by late Shri Tribhovanbhai Naranbhai and hence, he could not be treated as a tenant on 01.04.1957. Furthermore, respondent Jagjivanbhai put forth his claim under Section 32-G of the Act as a deemed tenant by virtue of Section 4 of the Act on the basis of being legal heir of late Jerambhai. Once it was admitted that late Jerambhai was not a tenant, either deemed or contractual, his legal heirs, who would step into shoes of late Shri Jerambhai could not claim a better or superior status. On the other hand, there is no provision under which the respondent - Jagjivanbhai could claim status of a tenant without claiming to be legal heir and representative of late Shri Jerambhai. In these circumstances, there was no occasion for the Mamlatdar and ALT to treat respondent - Jagjivanbhai as a deemed tenant under Section 4 of the Act, because even otherwise, under Section 4 itself Clause-(a) carves out an exception from amongst persons who could be deemed to be tenants. Thus the person who is lawfully cultivating any land belonging to another person cannot be deemed to be a tenant if the person cultivating the land is a

member of the owner's family. The relationship between the petitioner - Bai Lakhiben and respondent Jagjivanbhai cannot be denied and has not been denied. Therefore, by virtue of the exception carved out by Clause-(a) respondent - Jagjivanbhai cannot be held to be a deemed tenant.

12. Realizing this position, the Tribunal has treated respondent to be a contractual tenant. It is an admitted position between the parties that there is no written contract between the petitioner and the respondent and no oral contract could be shown to be existing by virtue of conduct of the parties. There is no evidence to show that any rent was paid by the respondent to the petitioner at any point of time; though contention was raised that some amount was paid as rent, the same has been controverted on the side of the petitioner by saying that the said payment was towards other dues. Therefore, there is no evidence to suggest any payment of rent. Neither the Mamlatdar and ALT nor the Tribunal have recorded any categorical finding in this behalf and hence, in absence of any evidence it is not possible to accept the contention on behalf of the respondent that the payment, stated to have been made by the respondent, was towards rent. The Tribunal has referred to some evidence stated to have been produced before the Mamlatdar and ALT on the basis of which the Mamlatdar and ALT has held the respondent to be a deemed tenant. However, the Tribunal has lost sight of the fact that firstly, no contention regarding contractual tenancy was raised either in the application under Section 32-G of the Act in 1980 before the Mamlatdar and ALT; secondly, no evidence in this behalf was ever led on behalf of the respondent before the Mamlatdar and ALT; and thirdly, in light of the aforesaid fact situation, the evidence which has been referred by the Mamlatdar and ALT is for the purposes of treating the respondent as deemed tenant and not as contractual tenant. Hence, the position is that there is no evidence before the Tribunal on the basis of which the Tribunal could have held the respondent to be a contractual tenant.

13. In light of the aforesaid facts, in absence of any cogent evidence, the finding recorded by the Tribunal stands vitiated as being based on no evidence and hence requires to be interfered with. This definitely amounts to the jurisdictional error which would permit this Court to intervene and entertain the petition.

14. Hence, in any view of the matter, the impugned order dated 27.06.1986 passed by the Tribunal cannot be

allowed to stand and is hereby quashed and set aside. The petition is accordingly allowed. Rule made absolute. There shall be no order as to costs.

Sd/-

[D.A.MEHTA, J]

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'Bhavesh'